Modified PTO/SB/33 (10-05)

PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number Q83028	
Mail Stop AF Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	Application Number 10/505,227	Filed August 20, 2004
	First Named Inventor Alban COUTURIER	
	Art Unit 2419	Examiner Andrew W CHRISS

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Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal

The review is requested for the reasons(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

☑ I am an attorney or agent of record.
Registration number 58,290

/Logan J. Brown 58,290/
Signature

Logan J. Brown
Typed or printed name

(202) 293-7060
Telephone number

May 14, 2009
Date

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Alban COUTURIER

Appln. No.: 10/505,227

Confirmation No.: 2136

Filed: August 20, 2004

For: QUALITY OF SERVICE REQUEST CORRELATION

Docket No: Q83028

Group Art Unit: 2419

Examiner: Andrew W CHRISS

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP AF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to the Pre-Appeal Brief Conference Pilot Program, and further to the Examiner's Final Office Action dated January 15, 2009, Applicant files this Pre-Appeal Brief Request for Review. This Request is also accompanied by the filing of a Notice of Appeal.

Applicant turns now to the rejections at issue:

I. Cited Art Rejections

Claims 1, 5-7, 9, 12 and 14 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Oosthoek. Applicant respectfully requests that the Examiners reconsider the rejection at least in view of the following comments.

With respect to **claim 1**, Applicant respectfully submits Oosthoek does not disclose or suggest, at least: "means for receiving a plurality of quality of service requests that each correspond to **one of a plurality of microflows**; ... and means for correlating the quality of service requests so as to define at least **one set of a plurality of correlated microflows**; wherein the control means

effects said control of said elements of said data network **only once** for the quality of service requests **of each said set**; and each said set comprises a plurality of microflows **whose corresponding quality of service requests are correlated**", as recited therein.

Oosthoek discloses a system which combines features of RSVP (which manages QoS per flow) and Diffserv (which manages QoS per aggregate) to manage QoS reservations within a network. In order to leverage the advantages of each protocol, Oosthoek uses RSVP management at the ingress and egress ports, and Diffserv management at the intermediate nodes (*see* ¶ 20). Thus, the system supports dynamic per flow QoS management between endpoints (*i.e.* Hosts 12 and 14 of FIG. 1) by converting RSVP (per flow) QoS requests into Diffserv (per aggregate) QoS request at the ingress point of the network, and converting the Diffserv QoS request back into an RSVP QoS request at the egress point of the network. Accordingly, within the network, the interior nodes do not manage/track individual flows and simply operate as if under a Diffserv management scheme.

The Examiner alleges that in Oosthoek, "although the microflows are tracked individually, the interior nodes only see the reservation requests which specifies the aggregated state. Therefore, the interior nodes are controlled only once for the set of microflows covered by the aggregated reservation request." (Advisory Action, P. 2). This is simply incorrect.

Although, in Oosthoek, the interior nodes do not specifically manage/track individual flows, when a new flow reaches the ingress port of the network, the ingress port converts the per flow QoS related to the new flow into a per aggregate QoS request, and sends the request to the interior nodes. Accordingly, contrary to the Examiner's position, interior nodes are controlled **more than once** for the set of microflows covered by the aggregation. Interior nodes receive QoS requests every time a flow reaches the ingress port and forces a change in the aggregated state.

Thus, to the extent the Examiner relies on the argument that, in Oosthoek "the interior nodes are controlled only once for the set of microflows covered by the aggregated reservation request," to reject claim 1 (Advisory Action, P. 2), Applicant respectfully submits that Oosthoek does not disclose or suggest claim 1.

The Examiner further alleges that "Given [claim 1's] broadest reasonable interpretation ... a scenario could reasonable be contemplated wherein the elements have to be controlled again should another quality of service request be received for a newly received set of microflows. This scenario is anticipated by Oosthoek". (Office Action at page 7). Even assuming, arguendo, that the Examiner's assertion is correct, Applicant respectfully submits Oosthoek does not disclose or suggest claim 1, notwithstanding the Examiner's assertion.

Claim 1 recites that "the control means effects said control ... **only once** for the quality of service requests **of each said set**." Furthermore, "each set comprises a plurality of microflows whose corresponding quality of service requests are correlated."

The Examiner, in making this rejection, posited a scenario in which a "set" of microflows is newly received. The Examiner's scenario does not implicate the patentability of any of the claims, because a new "set" of microflows has to be interpreted in accordance with the express language of the claim. Each set of microflows is independent. The claim does not require that the control is performed only once for all time and forever, including new sets and flows.

In other words, under the scenario contemplated by the Examiner, the new "set" of microflows would trigger control means to effect control **only once** for the quality service requests **of the new set** of microflows. Previously serviced sets would have still been controlled "only once for the quality of service requests of each set", as recited in claim 1. Thus, the scenario contemplated by the Examiner does not implicate the patentability of claim 1 vis-a-vis the teachings

of Oosthoek. Oosthoek clearly lackes the above-mentioned requirements of independent claim 1 and cannot be said to anticipate nor render obvious the claim.

With respect **independent claims 9 and 14 and dependant claim 12,** Applicant respectfully submits that these claims are also patentable over Oosthoek for at least the same or similar reasons as those above regarding claim 1.

Applicant therefore respectfully requests the Examiners to withdraw this rejection of claims 1, 9, 12/9, and 14.

Further, Applicant respectfully submits that claims 2-4, 8, 10-11 and 13 are patentable over the various combinations of Oosthoek with other references at least by virtue of their dependency on claims 1 and 4. (*See* Final Office Action, P. 5-6 for full recitations of the rejections). The disclosures of the secondary references fail to cure the deficiencies of Oosthoek, as discussed above with respect to claims 1 and 9 Accordingly, Applicant respectfully submits that claims 2-4, 8, 10-11 and 13 are patentable over the various combinations applied by the Examiner.

II. Rejections Under 35 U.S.C. § 112, second paragraph

The Examiner alleges that claims 1-14 omit essential structural cooperative relationships of elements. In particular, the Examiner indicates that the specification does not disclose what the recited "means for receiving," "control means," and "means for communicating" comprise (see Office Action at page 2). Applicant respectfully requests that the Examiners reconsider the rejection at least in view of the following comments.

Applicant respectfully submits that claims 1-14 are patent-eligible under 35 U.S.C. § 112 for the reasons submitted in the Amendment filed September 9, 2008. Applicant further notes that the specification explicitly states exemplary embodiments of the above quoted means.

For example, with respect to "control means," the specification discloses: "under the 3GPP standards, the control device may be a proxy call session control function (P-CSCF) as described in the technical specification '3GPP TS 23.225'" (specification at page 7, ll. 2-6).

Furthermore, with respect to "means for receiving" and "means for communicating," the specification discloses: "In one embodiment of the invention, the admission controller AC and the control device CD may communicate by means of the COPS protocol as defined in RFC 2748 of the Internet Engineering Task Force (IETF)" (specification at page 7, ll. 7-11).

In view of the disclosure as a whole, and further in view of the specific portions referenced above, Applicant respectfully submits that the disclosure of structure is express, even though not word-for-word. Even if the support is not considered to be express by the Examiner, it is certainly at least "implicit or inherent in the specification [because] it would have been clear to those skilled in the art what structure . . . corresponds to the means-[]plus function claim limitation[s]." (*See* MPEP 2181(II) and *In re Dossel*, 115 F.3d 942, 946-47 (Fed. Cir. 1997)). Accordingly, Applicant respectfully requests the Examiners to withdraw the rejection under 35 U.S.C. § 112, second paragraph.

Respectfully submitted,

/Logan J. Brown 58,290/
Logan J. Brown
Registration No. 58,290

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE
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